United States Department of Labor Employees' Compensation Appeals Board

A.R., Appellant)	
and) Docket No. 12-690) Issued: September 12.	2012
DEPARTMENT OF THE ARMY, RED RIVER ARMY DEPOT, Texarkana, TX, Employer)	, 2012
Appearances: Appellant, pro se	Case Submitted on the Record	

Office of Solicitor, for the Director

ORDER REMANDING CASE

Before: RICHARD J. DASCHBACH, Chief Judge COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge

On February 7, 2012 appellant filed a timely appeal from a January 24, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying reconsideration of his case finding that his request was untimely and did not present clear evidence of error. The Board docketed the appeal as No. 12-690.

The Board has duly considered the matter and finds that the case is not in posture for a decision. OWCP accepted appellant's claim for binaural (both ears) loss of hearing. By decision dated July 14, 2009, it granted him a schedule award for a 27 percent binaural hearing loss. On October 24, 2011 appellant filed a claim (Form CA-7) for a schedule award. In support of his claim, he submitted a September 28, 2011 audiogram from Thomas D. Burns, an audiologist. By decision dated January 24, 2012, OWCP denied appellant's request for reconsideration as untimely filed and failing to establish clear evidence of error.

In schedule award cases, a distinction is made between an application for an additional schedule award and a request for reconsideration of the existing schedule award. When a claimant is asserting that the original award was erroneous based on his or her medical condition at that time, this is a request for reconsideration. A claim for an additional schedule award may

¹ On October 15, 2008 appellant, then a 60-year-old engineering equipment operator, filed an occupational disease claim alleging that on June 15, 1999 he first became aware of his hearing loss. However, it was not until December 15, 1999 that he first realized the connection between his hearing loss and his employment duties.

be based on new exposure to employment factors or on the progression of an employment-related condition, without new exposure, resulting in greater permanent impairment.²

The Board finds that appellant has submitted new evidence in the form of the September 28, 2011 audiology report addressing a claim for an additional schedule award based on a progression of his employment-related condition rather than on the basis that the original schedule award was in error.³ The Board has repeatedly held that a claimant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.⁴ The Board finds, therefore, that OWCP erroneously issued a denial of appellant's request for reconsideration under the clear evidence of error standard. On remand, OWCP should review and develop the medical evidence and issue an appropriate decision regarding his request for an increased schedule award.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 24, 2012 is set aside and the case remanded for further development consistent with this order of the Board.

Issued: September 12, 2012 Washington, DC

Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board

² R.L., Docket No. 09-1948 (issued June 29, 2010); B.K., 59 ECAB 228 (2007); Candace A. Karkoff, 56 ECAB 622 (2005).

³ Rose V. Ford, 55 ECAB 449 (2004).

⁴ See Linda T. Brown, 51 ECAB 115 (1999); Paul R. Reedy, 45 ECAB 488 (1994); see also B.K., supra note 2 (where it was evident that the claimant was seeking a schedule award based on new and current medical evidence, OWCP should have issued a merit decision on the schedule award claim rather than adjudicate an application for reconsideration).